

**§ 1040.89-12**

**10 CFR Ch. X (1-1-06 Edition)**

**§ 1040.89-12 Alternate funds disbursement procedure.**

(a) When DOE withholds funds from a recipient under these regulations, the Secretary or designee may disburse the withheld funds directly to an alternate recipient(s), any public or private organization or agency, or State or political subdivision of the State.

(b) The Secretary or designee will require any alternate recipient to demonstrate:

(1) The ability to comply with these regulations; and

(2) The ability to achieve the goals of the Federal statute authorizing the Federal financial assistance.

[50 FR 8089, Feb. 27, 1985, as amended at 68 FR 51348, Aug. 26, 2003]

**§ 1040.89-13 Exhaustion of administrative remedies.**

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) One hundred eighty (180) days have elapsed since the complainant filed the complaint and DOE has made no findings with regard to the complainant; or

(2) DOE issues any findings in favor of the recipient.

(b) If DOE fails to make a finding within 180 days or issues a finding in favor of the recipient, the Director, Office of Civil Rights and Diversity, will:

(1) Promptly advise the complainant of this fact; and

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant:

(i) That the complainant may bring a civil action only in a United States District Court for the district in which the recipient is located or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney fees, but that the complainant must demand these costs in the complaint;

(iii) That, before commencing the action, the complainant shall give 30 days notice, by registered mail, to the Secretary of DOE, the Secretary of the Department of Health and Human Services, the Attorney General of the United States, and the recipient;

(iv) That the notice must state: the alleged violation of the Act and these regulations; the relief requested; the court in which the complainant is bringing the action; and whether or not attorney fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

[50 FR 8089, Feb. 27, 1985, as amended at 68 FR 51348, Aug. 26, 2003]

## APPENDIX A TO SUBPART E OF PART 1040—DOE FEDERALLY ASSISTED PROGRAMS CONTAINING AGE DISTINCTIONS

Statute, Name, Public Law, and U.S. Code	Section and age distinction	Use of age/age related team			Popular name	CFDA No.
		Conditions benefits or assistance	Establishes criteria for participation	Describes beneficiaries or target groups		
Energy Conservation and Production Act, Title IV, Part A; Public Law 94-385, 42 U.S.C. 6861–6870.	Section 413(a). The Administrator shall develop and conduct, in accordance with the purpose and provisions of this part, a weatherization program. In developing and conducting such program, the Administrator may, in accordance with this part and regulations promulgated under this part, make grants (1) to States, and (2) in accordance with the provisions of subsection (d), to Indian tribal organizations to serve Native Americans. Such grants shall be made for the purpose of providing financial assistance with regard to projects designed to provide for the weatherization of dwelling units, particularly those where elderly or handicapped low-income persons reside, in which the head of the household is a low-income person.			X	Weatherization Assistance Program for Low-Income Persons.	81.042
Interagency Agreement between the United States Department of Energy and the United States Department of Labor, Interagency Agreement No. 99-9-1656-07-11; Authority: Comprehensive Employment and Training Act of 1978 (CETA) (Pub. L. 95-524, October 27, 1978; 92 Stat. 1909; 29 U.S.C. 801), the Energy Reorganization Act of 1974, as amended (Pub. L. 93-438, October 11, 1974; 88 Stat. 1233), and the Department of Energy Organization Act (DOE Act) (Pub. L. 95-91, August 4, 1977; 91 Stat. 565; 42 U.S.C. 7101).	Interagency Agreement, Section 1, Purpose: "The purpose of this agreement is to provide for a transfer of funds from the Department of Labor, Employment and Training Administration (ETA), Office of Youth Programs (OYP) to the Department of Energy, Directorate of Administration (AD), Office of Industrial Relations (OIR), to fund the Summer Science Student Program (SSSP). The SSSP will grant monies from DOL through DOE/OIR to DOE contractors to fund 480 participant slots for economically disadvantaged youths in an integrated program of career motivation and basic academic skill enrichment. The program is designed to motivate economically disadvantaged and academically talented youths to continue their education and to pursue energy-related careers upon graduation from high school.			X	Summer Science Student Program.	N/A

Statute, Name, Public Law, and U.S. Code	Section and age distinction	Use of age/age related team			Popular name	CFDA No.
		Conditions benefits or assistance	Establishes criteria for participation	Describes beneficiaries or target groups		
Executive Office of the President, Office of Science and Technology Policy, Memorandum, Subject: Research Ap- prenticeships for Minority High Schoolers, dated October 23, 1979.	Quotation from October 23, 1979 memorandum, paragraph 2, "The objectives are to stimulate broader interest in the minority communities in careers in science and engineering and to establish individual working relationships of high school students with active researchers who may become helpful men- tors when students need advice on college and careers and need letters of recommendation".			X	Summer Research Apprenticeship Program.	N/A

[50 FR 8089, Feb. 27, 1985, as amended at 68 FR 51348, Aug. 26, 2003]

**Subpart F—Nondiscrimination  
Under Title VIII of the Civil  
Rights Act of 1968, as Amend-  
ed [Reserved]**

**Subpart G—Program Monitoring**

**§ 1040.101 Compliance reviews.**

(a) The Director shall periodically conduct compliance reviews of selected recipients of DOE Federal financial assistance.

(b) The Director shall seek to review those recipients which have the most serious equal opportunity problems which cause the greatest disparity in delivery of services on a nondiscriminatory basis. Selection for review is to be made on the basis of the following criteria, among others:

(1) The relative disparity between the percentage of minorities, women, or handicapped persons, in the relevant labor market, and the percentage of minorities, women, or handicapped persons, employed by the recipient if employment practices are covered by this part;

(2) The percentage of individuals covered by the Age Discrimination Act of 1975, minorities, women and handicapped persons in the population receiving program benefits.

(3) The number and nature of discrimination complaints filed against a recipient with DOE or other Federal agencies;

(4) The scope of the problems revealed by an investigation commenced on the basis of a complaint filed with DOE against a recipient; and

(5) The amount of assistance provided to the recipient.

(c) After selection of a recipient for review, the Director Federally Assisted Programs Division or the Director's designee, shall inform the recipient of the selection. The notice shall be in writing and posted thirty days prior to the scheduled review. The letter will ordinarily request data pertinent to the review and advise the recipient of:

(1) The practices to be reviewed;

(2) The programs or activities affected by the review;

(3) The opportunity to make, at any time prior to receipt of DOE's finding, a written submission responding to

DOE which explains, validates, or otherwise addresses the practices under review; and

(4) The schedule under which the review will be conducted and a determination of compliance or noncompliance made.

(d) Within 90 days of arriving on-site to conduct the review, the Director, FAPD, shall advise the recipient, in writing, of:

(1) Preliminary findings;

(2) Where appropriate, recommendations for achieving voluntary compliance; and

(3) The opportunity to request DOE to engage in voluntary compliance negotiations prior to the Director's final determination of compliance or noncompliance. The Director or the Director's designee shall notify the Assistant Attorney General at the same time the recipient is notified of any matter where recommendations for achieving voluntary compliance are made.

(e) If, within 45 days of the recipient's notification under paragraph (d) of this section, the Director's (FAPD) recommendations for compliance are not met, or voluntary compliance is not secured, or the preliminary findings are not shown to be false, the matter will be forwarded to the Director for a determination of compliance or noncompliance. The determination is to be made no later than 60 days after the recipient has been notified of the preliminary findings. If the Director makes a determination of noncompliance, the Department shall institute actions specified in subparts G and H.

(f) Where the Director makes a formal determination of noncompliance, the recipient and the Assistant Attorney General shall be immediately advised, in writing, of the determination and of the fact that the recipient has an additional 10 days in which to come into voluntary compliance. If voluntary compliance has not been achieved within the 10 days, the Director shall institute proceedings under subpart H.

(g) All agreements to come into voluntary compliance shall be in writing and signed by the Director and an official who has authority to legally bind the recipient.